

1 UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF MICHIGAN
3 SOUTHERN DIVISION

4 UNITED STATES OF AMERICA,

5 Plaintiff,

DOCKET NO. 1:17-cr-13

6 vs.

7 MATTHEW JOHN ANDALUZ,

8 Defendant.

9 /

10
11 TRANSCRIPT OF SENTENCING HEARING

12 BEFORE THE HONORABLE ROBERT J. JONKER

13 UNITED STATES DISTRICT JUDGE

14 GRAND RAPIDS, MICHIGAN

15 September 25, 2017

16
17 Court Reporter: Glenda Trexler
18 Official Court Reporter
19 United States District Court
20 685 Federal Building
110 Michigan Street, N.W.
Grand Rapids, Michigan 49503

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12 * * * * *

13 Grand Rapids, Michigan

14 September 25, 2017

15 2:08 p.m.

16 P R O C E E D I N G S

17 *THE COURT:* We're here on the case of the
18 United States against Matthew John Andaluz, 1:17-cr-13, at the
19 time set for sentencing.

02:09:03 20 Let's start with appearances, please.

21 *MR. LEWIS:* Good afternoon, Your Honor, Sean Lewis
22 appearing on behalf of the United States.

23 *THE COURT:* All right.

02:09:11 24 *MS. NIEUWENHUIS:* And Helen Nieuwenhuis on behalf of
25 Mr. Andaluz, Your Honor, who is here today and seated on my

02:09:15 1 right.

2 *THE COURT:* All right. Thank you.

3 In just a minute you're going to get a test pattern
4 of sound, so I'll just warn you about that in advance. But in
02:09:23 5 the meantime we'll move forward.

6 So what we have in terms of sentencing materials --
7 and I want to make sure I have all I need -- are the
8 presentence report from our probation officer. I also have a
9 sentencing memorandum from Ms. Nieuwenhuis on behalf of her
02:10:01 10 client which also supports her request for downward variance.
11 I have a character letter that was also filed by the defense.
12 And then the government sentencing memorandum. And I think in
13 terms of written material that's all.

14 Anything else I should have from the government in
02:10:20 15 written form?

16 *MR. LEWIS:* No, thank you.

17 *THE COURT:* All right. Anything I'm missing from the
18 defense?

19 *MS. NIEUWENHUIS:* No, Your Honor.

02:10:24 20 *THE COURT:* Okay. Thank you.

21 Let me start with the Plea Agreement in the case. It
22 did call for a dismissal of Count 2 in exchange for the guilty
23 plea to the first count. Ultimately that doesn't have an
24 impact on where the guidelines come out. They are still going
02:10:51 25 to be in this case life at 43 as the level of offense and

02:10:57 1 category I criminal history. But it does have the impact, as
2 the probation officer points out in paragraph 80, of capping
3 the sentence here at 360 months or 30 years. If there had been
4 a conviction on both counts, then because life is the guideline
02:11:14 5 sentence, the two counts of conviction would stack, and so the
6 sentence the Court could potentially impose would be higher.

7 And that requires me to take a look, then, at 6B1.2
8 of the guidelines and related authority to make sure I'm
9 satisfied on this record that that's a fair resolution of the
02:11:32 10 case. I do think it is in this situation. And I think that
11 the resulting sentencing range available to the Court, along
12 with the guidelines and everything else, provides adequate
13 sentencing discretion for the Court and still does not in any
14 way undermine the purposes of sentencing, so I'm going to go
02:11:56 15 ahead and accept the Plea Agreement and invite the government's
16 motion to dismiss the affected count.

17 *MR. LEWIS:* I move to dismiss Count 2, Your Honor.

18 *THE COURT:* All right. I'll go ahead and grant that.
19 And then in terms of the guidelines, I won't go through all the
02:12:11 20 separate levels of enhancement. The basic message, as detailed
21 in the presentence report, is that when you go through the
22 guideline range, you wind up at about -- I think the total is
23 51. You take two points off for acceptance and you're at 49,
24 which is still off the chart. And under those circumstances,
02:12:33 25 the guidelines direct a move to the top level of offense which

02:12:39 1 is 43, and category I is on the chart lifetime, but because of
2 the count of conviction, which has a 30-year maximum, the
3 guideline sentence becomes 360 months for that maximum.

4 Does the government have any objections to the
02:13:00 5 guidelines?

6 *MR. LEWIS:* No, thank you.

7 *THE COURT:* Okay. And is the government moving for
8 the third point in this case or not?

9 *MR. LEWIS:* We are not, Your Honor.

02:13:05 10 *THE COURT:* Okay.

11 *MR. LEWIS:* The Plea Agreement -- or the plea came
12 after the final pretrial conference.

13 *THE COURT:* All right. So I'm going to grant the two
14 points of acceptance that are within my power because I think
02:13:15 15 that's appropriate on this record. And as Mr. Lewis has
16 indicated, the government isn't moving for the third point
17 given the timing. And I think that it's paragraph 48 of the
18 presentence report should simply reflect that there will only
19 be two points off 51, so we'd be down to 49, not 48. But as I
02:13:42 20 said, it doesn't have any impact since we go down to 43 in any
21 event.

22 Does the defense have any objections to the
23 guidelines?

24 *MS. NIEUWENHUIS:* No, Your Honor.

02:13:50 25 *THE COURT:* Okay. Then let me hear from the parties

02:13:52 1 on their sentencing positions starting with the defense.

2 *MS. NIEUWENHUIS:* Thank you, Your Honor.

3 Your Honor, I've spent considerable time on
4 Mr. Andaluz's case, and there is really -- it's really
02:14:25 5 difficult when representing somebody on these child pornography
6 cases. The guidelines are just incredibly high as the Court is
7 aware and we've kind of gone through already. But there are
8 many things I'd like to say on his behalf.

9 Prior to this incident and what occurred with the
02:14:51 10 codefendant, Ms. Evans, and the minor child involved,
11 Mr. Andaluz had really significant issues. Mental health
12 issues. Depression. He had attempted to commit suicide
13 numerous times and was almost successful back in 2009 when he
14 lived in Queens, New York.

02:15:13 15 Then he met Ms. Evans online and ended up moving to
16 Battle Creek. And although it may sound not strange but
17 difficult to understand, that when he came here, I think this
18 did really feel like a family to him. And I think that I'm
19 asking the Court to factor that issue into the sentencing,
02:15:39 20 because I think when you look at Mr. Andaluz's prior life
21 before meeting Ms. Evans, I really don't think he had much of a
22 family foundation or a family that he felt a part of. And so
23 I'm asking the Court to take that into consideration when we're
24 looking at this mandatory minimum of 15 and these guidelines at
02:16:07 25 30 years.

02:16:08 1 Mr. Andaluz has never been incarcerated until this
2 case. And he's criminal history category I. He's never really
3 done any time. He's never faced prison. He's never even been
4 in a local county jail. And so I'm asking the Court to take
02:16:30 5 those factors into consideration in the consideration of
6 perhaps a downward variance.

7 Many times I've been before this Court and my client
8 has a record which is replete with going to prison and coming
9 back and going to prison again, and that is not the person you
02:16:49 10 see before you. And I'm not minimizing in any way what
11 actually happened in this case. And I don't think Mr. Andaluz
12 is in any of my conversations that I've ever had with him. I
13 think that he has shown real guilt, remorse, and I would almost
14 say extreme remorse over this, Your Honor. I think it's
02:17:11 15 difficult for Mr. Andaluz to be able to articulate, I guess,
16 for himself on this case. He has certainly indicated to me
17 that he knows he needs psychological help and certainly wants
18 to take advantage of any and all programs that the Court may
19 sentence him to. And I think that's important, because whether
02:17:36 20 a person really wants to better themselves and use the time
21 that the Court is going to give, and clearly even at the
22 mandatory minimum he is looking at 15 years of incarceration
23 and treatment, and I think he stands here really ready,
24 willing, able, and accepting that he has those limitations and
02:18:00 25 they need to be addressed. And he knows that he has had mental

02:18:06 1 illness for a long time. And I think that he's had a long time
2 to sit at the jail and think about this and take that into
3 consideration.

4 He does have some other physical concerns. He has --
02:18:20 5 he needs some dental work. He needs corrective lenses. He
6 suffers from sleep apnea. Hopefully some of those things can
7 be addressed while he's away.

8 He's indicated to me he's actually done some research
9 as to placements. And I know the Court usually does not
02:18:39 10 recommend a particular placement. I know that's for the Bureau
11 of Prisons. But he has indicated that although his mom lives
12 in Florida, that he would really like to be placed in
13 North Carolina where the Butler -- or Butner facility is,
14 Your Honor.

02:19:00 15 He's very interested in vocational training.
16 Electrical training. Culinary training. And he's quite a
17 talented artist, Your Honor. And I ask the Court to take all
18 of these things into consideration.

19 During the pendency of this case, as the Court is
02:19:15 20 aware, Ms. Evans committed suicide. This left this minor child
21 really with no place to go. And it's -- Mr. Andaluz has
22 discussed this, Your Honor, and I think that he is remorseful
23 and is asking the Court to take all of this into consideration.

24 While he was in jail he had received a letter, and
02:19:45 25 I'm not going to introduce the entire letter from Ms. Evans,

02:19:50 1 but she did indicate that -- she says that "I can't go through
2 life without my family, and yes, that includes you too." And I
3 think that really kind of says it all because I think that
4 Mr. Andaluz felt the same way about their family. And although
02:20:05 5 we are sitting here on this case today and he is being
6 sentenced on one of the most serious offenses you can have, I'm
7 asking the Court to take all of that into consideration,
8 Your Honor.

9 *THE COURT:* All right. Thank you, Ms. Nieuwenhuis.

02:20:18 10 *MS. NIEUWENHUIS:* You're welcome.

11 *THE COURT:* Mr. Andaluz, you have the privilege of
12 speaking too. You don't have to, but it's an opportunity.
13 It's a right and a privilege, not an obligation. And if you'd
14 like to use it, I would be happy to listen to you now.

02:20:29 15 *THE DEFENDANT:* I have written something.

16 *THE COURT:* Please.

17 *THE DEFENDANT:* When I first came -- sorry. When I
18 first came to Michigan after my suicide attempt in 2009, I was
19 a completely broken individual with no anchor in this world. I
02:20:43 20 had no idea who I was as a person anymore or who I could grow
21 to be. In some very important ways I know that I have failed
22 the person I wanted to become. But in the years since 2009
23 I've worked hard at fixing myself through medication, therapy,
24 and especially the family I became a part of. Everything that
02:21:03 25 is good about me is because of them. Everything else is, I

02:21:07 1 know, all on me.

2 Compassion, empathy, loyalty, and even pragmatism are
3 aspects of myself I don't think I would have ever known again
4 if it weren't for the people closest to me here in Michigan.

02:21:17 5 I harbor no illusions as to the seriousness of the
6 charge I've been convicted of, but I'm seeking from the Court a
7 merciful sentence in my case today. I'm asking for the minimum
8 sentence to be granted because I'm neither unfocused nor

9 dangerous. I'm no longer the broken person I was eight years
02:21:35 10 ago. And I'm no longer the person I have become in its place.
11 I have no criminal history, and I know that inside myself I'm
12 not a danger to any society. I know that with the therapy
13 offered to me I can assure the courts of the same.

14 I regret tremendously the events and actions that led
02:21:49 15 me here to this place in my life. One person I've come to love
16 above all others in this world is the one person that has
17 become hurt the most. Trying to atone for her pain will occupy
18 the remainder of my days in this life.

19 I plan on using my time while incarcerated as
02:22:04 20 thoroughly as possible with therapy, education, and work. My
21 hope is to be fully prepared for a life outside of prison in a
22 time frame early enough for it to be worth the effort because I
23 further hope to not grow old and die in prison. There's not
24 much more I can say that hasn't already been said here, so I
02:22:24 25 just want to say thank you to the Court for taking time and

02:22:26 1 listening to me.

2 *THE COURT:* All right. Thank you, Mr. Andaluz.

3 From the defense at this point anything else?

4 *MS. NIEUWENHUIS:* No, Your Honor. Thank you.

02:22:34 5 *THE COURT:* All right. You may both be seated and
6 we'll give Mr. Lewis an opportunity.

7 *MR. LEWIS:* Your Honor, Child 1 is here today and
8 wishes to make an in-person victim impact statement to the
9 Court, so with the Court's permission, may I bring her forward?

02:22:51 10 *THE COURT:* Sure.

11 *MR. LEWIS:* Could I have just a moment, Your Honor?

12 *THE COURT:* Sure. Why don't you just start your
13 presentation and we can let the victim rest and take some deep
14 breaths, get settled. She's going out into the hall for a bit.
02:23:29 15 And once you're finished, we'll see if she's in the state of
16 mind that she wants to address the Court.

17 *MR. LEWIS:* Thank you, Your Honor.

18 *THE COURT:* Sure.

19 *MR. LEWIS:* Your Honor, when Mr. Andaluz just
02:23:40 20 addressed the Court he talked about how Ms. Evans and her
21 children had become like a family to him. And I think that's
22 right. And that is, frankly, one of the most shocking and
23 troubling aspects of this case. Instead of taking the
24 opportunity to cherish that opportunity that was presented to
02:24:01 25 him, to have a family, to have people who trusted and loved

02:24:07 1 him, who looked to him for support and stability, he took
2 advantage of that situation. He took advantage of a 9 and then
3 10-year-old girl who was looking to him as a father figure as
4 part of a family.

02:24:25 5 It wasn't just something that happened once. It was
6 part of a deliberate process. The defendant engaged in
7 grooming activity. He photographed, sexually abused, and
8 exploited the child over a period of time. He circulated those
9 images to other people around the internet. And it isn't the
02:24:47 10 case that that was all conduct that occurred a while ago. That
11 it was just back in 2010. Because even when agents came with a
12 search warrant in 2016, the defendant still had child
13 pornography. So I think looking at the record in this case
14 it's not accurate to say, as the defendant has today, that he
02:25:08 15 does not pose a danger. I think all the evidence in this case
16 shows exactly the opposite.

17 When you look at the conduct in this case, I don't
18 think serious comes anywhere close to describing what happened.
19 Devastating. Earth-shattering. What he did will scar that
02:25:29 20 child forever. Yes, she'll be able to move on. Yes, she'll be
21 able to have a productive life where she'll be able to make an
22 impact. But the hurt and the pain from the actions of somebody
23 who was, in his own words, part of the family is just a level
24 of harm that we believe a sentence of 30 years is needed to
02:25:54 25 address.

02:25:56 1 For those reasons, Your Honor, as well as the other
2 3553(a) factors that I addressed in my memo, we would ask the
3 Court to impose the maximum sentence available here.

4 THE COURT: All right. Do you want to go check on
02:26:09 5 her? And if you think we need a short break, we can take one.

6 MR. LEWIS: Thank you.

7 (Mr. Lewis has an off-the-record conversation with
8 Child 1)

9 MR. LEWIS: All right. Your Honor, Child 1 is ready
02:27:35 10 to proceed.

11 THE COURT: All right. Thank you. We're calling you
12 Child 1, I'm sure you know, not because that's your name but
13 because when we're in proceedings like this we use a general
14 designation to protect your privacy as a minor victim. And I
02:27:49 15 don't mean any disrespect in calling you that, but that's what
16 I'm going to do.

17 And do you feel like you're ready to present your
18 statement?

19 CHILD 1: Yes, Your Honor.

02:27:59 20 THE COURT: Okay. Go ahead and pull that microphone
21 close and we'll listen to what you want the Court to hear at
22 this point.

23 CHILD 1: So this case has changed my life
24 influencely. I've had to live in four different houses in
02:28:16 25 11 months. I've been taken away from my family, my brother,

02:28:20 1 and now my mother is dead. I have absolutely nobody. I was
2 put in Albion because I was taken away from everybody and I was
3 pushed away from the world. I felt like I wanted to end my
4 life.

02:28:38 5 This feeling has made me worried, scared, and has
6 driven my life down to the hole. One day I might not have a
7 place to live. One day I may end up in a hole. I don't know
8 how my education is going to go because every day I have to
9 feel "What am I going to come home to? What's going to happen
02:28:59 10 with me in the next week, next month?" An almost 17-year-old
11 shouldn't have to be going through this. If you ask a
12 17-year-old to step into my shoes for five seconds, that child
13 will not be able to last one second because nobody knows how I
14 feel. Nobody knows how hard it is to live like this. I can't
02:29:22 15 have a normal relationship with anybody because I feel like I
16 can't trust anybody anymore. My life has been screwed up, and
17 I just want it to be normal again.

18 I feel like this man should get 30 years in life --
19 or in prison because he needs to figure out how hard it is for
02:29:46 20 me now to live my life. How hard it is to be the person that I
21 want to be. I want to change my life and be somebody else, but
22 then I have to realize I'm not anybody else, I am me. These
23 11 months have been the worst 11 months of my life. Everything
24 happened in a blink of an eye. And I still remember it like
02:30:11 25 the back of my hand and will never forget the day everything

02:30:14 1 happened.

2 I have the fear of not graduating, having to switch
3 schools, going different places, going to stranger people and
4 having to change my life completely, and I don't like it. I
02:30:33 5 want this all to end.

6 And like I said before, I've wanted to end my life
7 because I can't handle it anymore. I've wanted to cut myself
8 so bad that I bled to death. I wanted to hang myself. I've
9 wanted to do so many things. I just haven't had the strength
02:31:05 10 to because I know out there there's people who love me for who
11 I am and don't want me to go away. And I've learned that. But
12 this has just changed my life. And I think he should get
13 30 years in prison. And that's all I have to say.

14 *THE COURT:* All right. Thank you. Thank you very
02:31:22 15 much.

16 Mr. Lewis, anything else from the government?

17 *MR. LEWIS:* No, thank you, Your Honor.

18 *THE COURT:* Is there any specific restitution
19 request?

02:31:37 20 *MR. LEWIS:* No, Your Honor.

21 *THE COURT:* Okay. Anything else, Ms. Nieuwenhuis?

22 *MS. NIEUWENHUIS:* No, Your Honor. Thank you.

23 *THE COURT:* All right. I want to start by
24 reiterating the guidelines. That's where we always start when
02:31:49 25 it comes to sentencing. And as I indicated earlier, and

02:31:52 1 without objection, the guideline on the chart is life, but
2 because the count of conviction has a 30-year maximum, the
3 guidelines make our guideline sentence 360 months. The
4 mandatory minimum is 15 years. And the question in this
02:32:09 5 sentencing, as it would be in any, is what's sufficient but not
6 greater than necessary to achieve the purposes of sentencing?
7 Which include punishment in an appropriate way that doesn't
8 overpunish but doesn't underpunish either. The punishment that
9 reflects the gravity of the crime. Certainly deterrence for
02:32:26 10 Mr. Andaluz individually but also for other people considering
11 this kind of activity. Public protection. The need to promote
12 rehabilitative opportunities. All those things are in the mix.

13 Before I talk specifically about what I intend to do
14 in this sentence, I want to say, first of all, that I think any
02:32:47 15 time we hear from a victim in open court we are blessed with a
16 gift that we don't get in every criminal case. We're getting
17 the opportunity to see not only and hear not only what the
18 defendant experiences, and that's important too, that's an
19 allocution we hear in virtually every sentence, but now we also
02:33:11 20 get directly presented in the very same space the story and
21 impact of the victim. And in this case we were also receiving
22 a very articulate story from a victim who was able to in a few
23 words but a few very direct, crisp words explain how this has
24 affected her life, turned it upside down, turned it, as she
02:33:39 25 says, into nothing a normal 17-year-old should ever have to

02:33:42 1 experience. And I think everybody can agree on that.
2 Certainly no normal 17-year-old should ever have to experience
3 this, let alone experience it at the early and tender ages of
4 10 and 11 years old. And it's important for us to see and hear
02:34:00 5 that and I think for us to say through the Court, to any victim
6 and now the victim that we're calling Child 1 here in court,
7 there's no part of this or anything that happened that is in
8 any way your fault. And I want that to be very clear. The sad
9 thing is when we do hear and read victims' stories in cases
02:34:20 10 like this, one of the last and most painfully crooked legacies
11 is that the victims sometimes take on guilt and responsibility
12 and nothing could be further from the truth. I think I need to
13 say that flat out.

14 The second thing I just want to say in response to
02:34:36 15 the victim is that probably like many victims she has
16 experienced the desire to end her life in any number of ways to
17 make the pain stop. And as she said, she didn't have the
18 strength to do it. And I would say to her I think it takes
19 more strength to keep going and I admire that. She's taken
02:34:59 20 steps already, and I can hear this in her statement, not to
21 bury and ignore what happened but to embrace it and say "It
22 happened, it wasn't my fault, but now I've got to move on and
23 step forward, recognizing who I am, what happened to me, and to
24 do that in a fearless way." And if she continues to do that,
02:35:22 25 if today is any indication, I have no doubt she'll not only

02:35:25 1 graduate, but she'll go on and do, I think, very positive,
2 contributing, and successful things throughout her life,
3 despite the very real impact, very painful impact, and really
4 the life-changing impact that she described from the criminal
02:35:43 5 activity.

6 Part of the sentencing obligation of every court is
7 to hear and balance those stories of the defense and the
8 victim, put it on the guidelines, consider all of the factors
9 in the case, and decide what the Court believes is the
02:35:58 10 sufficient but not greater than necessary sentence to comply
11 with the purposes of the statute.

12 In this case I do believe the guideline sentence is
13 the appropriate one that balances the factors and does it in a
14 meaningful and appropriate way, and so I do intend a guideline
02:36:15 15 sentence, which in this case is 360 months. I think it's
16 important to say a few things about that because it's not as
17 though what Ms. Nieuwenhuis has said simply falls on deaf ears
18 or washes away.

19 There are many genuine problems that Mr. Andaluz has
02:36:34 20 had in his life, and I don't diminish that in any way. There
21 was perhaps a glimmer of hope for the first time when this
22 group of people came together and hoped to forge a family. All
23 of that went terribly wrong, but that doesn't mean that the
24 desire for one was any less real, and I understand that and I
02:36:56 25 hear that. I think it's important to say, though, that even

02:36:59 1 though I intend the guideline sentence of 360 months and even
2 though it is the maximum sentence on the count of conviction,
3 it's not the maximum sentence that Mr. Andaluz could have faced
4 had the case gone to trial and had he lost along the way. The
02:37:16 5 Plea Agreement did give him real and substantial benefit, and I
6 need to indicate that in my view at least that the kinds of
7 factors and considerations that Ms. Nieuwenhuis properly
8 identifies in support of her client have already been weighed
9 and in my view credited in the plea deal. By giving the
02:37:33 10 defense the certainty that the final sentence would be between
11 the minimum 15 and the maximum 30 years on the single count of
12 conviction, what Mr. Andaluz was able to do is ensure that he
13 didn't face worse. Knowing the guideline sentence would
14 probably be life on the chart, he doesn't have to face the risk
02:37:53 15 that multiple counts of conviction would be stacked opening the
16 possibility of a sentence even longer than 360 months. As the
17 Court has seen in other cases like this that have gone to trial
18 and resulted in multiple-count convictions.

19 I think it was appropriate to do that in this case,
02:38:12 20 to limit the exposure, because the plea deal ultimately did
21 allow the case to go forward without the need for testimony,
22 which would have certainly included testimony from the victim,
23 Child 1, and all of the added trauma that goes with that. It
24 was a recognition as well that what Mr. Andaluz did, albeit
02:38:37 25 after the final pretrial conference, was come to terms with

02:38:41 1 accepting responsibility for this.

2 And, of course, 360 months is still a lot of time.

3 It's a long time and I'm mindful of that as well. In this

4 case, though, departures and variances I don't think are

02:38:55 5 warranted because the reason we're at 360 months is not simply

6 because the guidelines related to child pornography or child

7 exploitation tend to generate high numbers in many or all cases

8 but because the underlying factors here really are based on

9 real serious wrongdoing. What we have is not just the

02:39:21 10 exploitation of the prepubescent female, bad enough in any

11 case, but we have a victim who was abused at the hands of a

12 person who was supposed to be caring for her. If not the

13 biological father, then at least the person who wanted to be

14 the father figure, who wanted to be the caretaker. And that

02:39:42 15 just amplifies the harm and the perversion of what happened.

16 Beyond that you have, in my view, the added loss that

17 goes into the mix here when the codefendant and the mother of

18 the child commits suicide as the case is pending, no doubt

19 at least partly because of everything that's circulating in the

02:40:04 20 mix here. And we have, from what Child 1 has reported here

21 directly, real-life ongoing impact that will probably affect

22 her no matter what she's able to achieve despite it every day

23 of her life. That kind of activity is serious.

24 And moreover what we actually had here is, you know,

02:40:25 25 not just a person who was collecting child pornography, which

02:40:30 1 we see on all too frequent a basis, we had somebody here who
2 created it with this person he was responsible for caring for
3 and then disseminated it to the internet so that what has
4 become common in cases like this is to hear of a so-called
02:40:45 5 series of child pornography tied to the name of a victim. And
6 we now have a new series out there with this person, Child 1,
7 as the victim which has already shown up in multiple federal
8 law enforcements. And that we know from experience, sadly, it
9 will be perpetuated and propagated on the internet. That's
02:41:04 10 about as bad as it gets in my view in cases like this.
11 Actually creating new, fresh material that people take
12 advantage of, propagate. So although I have in many cases
13 found bases to depart or vary, rarely have I done that in a
14 case where there's been hands-on exploitation. And I would say
02:41:29 15 here even less so would be the reason since you not only have
16 the hands-on exploitation but contributing to an already
17 polluted stream of internet child pornography we have a new
18 series. So for those reasons I do think the guideline sentence
19 of 360 months is appropriate, is sufficient but not greater
02:41:52 20 than necessary to achieve the purposes of sentencing, and
21 that's what I intend from the Court's custodial sentence.

22 I certainly am going to recommend mental health
23 assessment and treatment. There have been multiple efforts
24 that Mr. Andaluz has made over the years at suicide, and the
02:42:13 25 report from the officer indicates that he continues to have

02:42:16 1 those feelings. He needs to be treated for that, and he
2 deserves our -- all of our efforts to attempt to meet those
3 needs. Certainly medical and dental, all the kinds of personal
4 care requirements that Ms. Nieuwenhuis identifies will be the
02:42:33 5 responsibility of the federal government given that he is in
6 custody, and I'll highlight that recommendation. And I'll
7 recommend appropriate vocational opportunities since
8 Mr. Andaluz will benefit from that and will need that when he
9 does return to the community.

02:42:51 10 I will also note his request for the Butner
11 placement, which may be a place that will be high on the list
12 anyway given the sexual offender treatment programming that
13 sometimes happens there, but in my view that's the priority,
14 the ability to get sexual offender treatment and appropriate
02:43:11 15 treatment for his mental health-related conditions.

16 I intend a supervised release period of 10 years
17 which I think will be appropriate to supervise Mr. Andaluz in
18 the community to determine whether in fact he is no longer a
19 threat to the community as he believes or whether there is
02:43:32 20 continuing reason to have supervision as the government
21 believes. I think 10 years is an appropriate way to protect
22 the public and to test those things.

23 The normal mandatory conditions of cooperation in the
24 collection of DNA and drug testing are in effect, and the
02:43:51 25 requirement to register on the sex offender registry in a case

02:43:57 1 like this will also be in effect. Standard conditions
2 including no firearms will also be in effect.

3 I have a series of special conditions that are more
4 tethered to this particular case, and I need to read those out.
02:44:08 5 The first, I'm certainly going to recommend substance abuse
6 assessment and treatment with Mr. Andaluz paying a portion of
7 the costs as he's determined able. Substances may not have
8 been prevalent in the more recent years for Mr. Andaluz, but
9 there's a history of it and we should address it.

02:44:27 10 Second, Mr. Andaluz must participate in a program of
11 mental health treatment including sex offender programming as
12 directed by the probation officer, again paying a portion of
13 the costs as he's determined able.

14 And (3) he needs to provide the probation officer
02:44:38 15 with access to requested financial information so that that
16 kind of ability-to-pay determination can be made.

17 (4) his residence and employment must be preapproved
18 by the probation officer.

19 (5) he must not associate or have contact with
02:44:53 20 convicted sex offenders other than in a therapeutic setting and
21 with the permission of the probation officer.

22 (6) he must not have contact with minors, that is
23 children under the age of 18, without the written approval of
24 the probation officer, and he must refrain from entering into
02:45:10 25 areas where children frequently congregate such as daycare

02:45:13 1 centers, playgrounds, parks, theaters, and the like.

2 Next, he must not have contact with the victim in
3 this case. That includes physical, visual, written,
4 electronic, telephone, any contact. And must not direct or
02:45:27 5 cause or encourage anyone else to have contact with the victim.

6 And then I have a series of four conditions that are
7 tied to use and monitoring of internet, internet-capable
8 devices. They are different than the ones the probation
9 officer has recommended, so I'll read them out. I think I'm up
02:45:46 10 to 8. Mr. Andaluz must submit all photographic equipment,
11 personal computers, and other internet-capable devices and
12 related equipment that he owns or controls or uses to search to
13 be conducted by the U.S. probation officer or its designee
14 without prior notice or search warrant. And he must permit the
02:46:03 15 probation office to install and use monitoring programs on all
16 such equipment. Refusal to submit to that is a violation of
17 the conditions of supervision.

18 (9) he must provide all computer-related billing
19 records including telephone, cable, internet, satellite, and
02:46:18 20 the like as requested by the probation officer.

21 (10) he must report all electronic addresses from
22 which he sends or receives any electronic communications to the
23 probation officer. And those addresses and related accounts
24 will be subject to search and monitoring by the probation
02:46:33 25 officer.

02:46:36 1 The last one is the defendant must advise anyone in
2 the household or his place of employment that any computer in
3 the household may be subject to computer monitoring.

4 In terms of financial sanctions, there is a special
02:46:52 5 assessment that's automatic of \$100. The forfeiture was
6 preliminarily entered on the camera, and I'll make that final.

7 There is no claim for restitution in a specific
8 amount.

9 And the fine the Court intends at a below-guideline
02:47:15 10 range but still significant and tied to financial
11 accountability in the Bureau of Prisons. I intend a fine of
12 \$5,000 payable on the normal custodial terms of \$25 under the
13 IFRP program in minimum quarterly terms or a minimum \$20
14 monthly otherwise. Any balance due in supervision in minimum
02:47:40 15 monthly installments of \$50.

16 The last question I have before turning to the
17 lawyers for objections: Is this a case that involves the
18 special assessment that we see under some of the child
19 pornography cases?

02:47:53 20 *MR. LEWIS:* It is not, Your Honor, because the
21 conduct predated that statute.

22 *THE COURT:* All right. Then that's the intended
23 sentence of the Court.

24 For the government, legal objections?

02:47:59 25 *MR. LEWIS:* No, thank you.

02:48:00 1 *THE COURT:* Ms. Nieuwenhuis, legal objections?

2 *MS. NIEUWENHUIS:* No, Your Honor. I only had one
3 follow-up question.

4 *THE COURT:* Sure.

02:48:07 5 *MS. NIEUWENHUIS:* You were saying -- and, of course,
6 this is way in the future -- but like search of computers or
7 whatever, that's without any probable cause or anything is what
8 that order is saying?

9 *THE COURT:* It is.

02:48:19 10 *MS. NIEUWENHUIS:* Okay. I guess we would object. I
11 would just like to do some research on that, Your Honor.

12 *THE COURT:* Okay. All right. Well, I'm going to go
13 ahead and impose the sentence as I announced my intent to do
14 it, including the terms in my view no probable cause is
02:48:41 15 required for that kind of search or monitoring because of the
16 offense of conviction and related conduct that's detailed in
17 the presentence report. All of us, whether you've ever been
18 convicted of a crime or not, are subject to probable-cause
19 searches under appropriate circumstances. I think somebody who
02:48:57 20 has been convicted of this offense, was found with child
21 pornography on the computer at the time of his arrest, I think
22 over a hundred images and multiple videos, should be subject to
23 monitoring without notice or a search warrant or other
24 probable-cause requirement as a matter of public safety. So
02:49:17 25 that would be my rationale for overruling the defense

02:49:20 1 objection.

2 And beyond that, then, I need to impose the sentence
3 as I announced my intent to do, which is a custodial term of
4 360 months, 10 years of supervision on the terms indicated, the
02:49:35 5 fine of \$5,000, the forfeiture going final on the Nikon camera,
6 and the special assessment of \$100 without any restitution
7 award in the absence of a claim.

8 And, Mr. Andaluz, I'm going to make that the sentence
9 of the Court and impose it now. I'll make it the written
02:49:54 10 judgment of the Court. You'll have a 14-day window to appeal.
11 So talk to Ms. Nieuwenhuis about that and make sure you tell
12 her if you want to appeal because she needs to hear that from
13 you and then has only that 14-day period to file.

14 Do you have any questions about that, Mr. Andaluz?

02:50:13 15 *THE DEFENDANT:* No, I do not.

16 *THE COURT:* All right. Anything else, Mr. Lewis?

17 *MR. LEWIS:* No, thank you, Your Honor.

18 *THE COURT:* Or Ms. Nieuwenhuis?

19 *MS. NIEUWENHUIS:* No, thank you.

02:50:19 20 *THE COURT:* All right. Thank you.

21 *THE CLERK:* Court is in recess.

22 *(Proceeding concluded at 2:50 p.m.)*

23 * * * * *

24 I certify that the foregoing is a correct transcript
25 from the record of proceedings in the above-entitled matter.

1 I further certify that the transcript fees and format
2 comply with those prescribed by the court and the Judicial
3 Conference of the United States.

4
5 Date: October 31, 2017

6
7 **/s/ Glenda Trexler**

8 Glenda Trexler, CSR-1436, RPR, CRR
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